

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

-----X
In re

CASE NO.
23-40050

ANTHONY BITETTO,

Debtor(s).
-----X

REPLY TO AFFIRMATION IN OPPOSITION

1. The Debtor's model 13 plan mortgage arrears are based on a statement sent to the Debtor from Planet Home Lending a/k/a Avail 1 LLC (the "**Mortgagee**") on December 16, 2022 showing the amount due by January 1, 2023 to be \$151,700.79 (see **Exhibit A**). Even if the actual arrears are \$37,729.14 more the Debtor can make up the additional \$628.82 per month in his chapter 13 plan.
2. The Debtor's last attempt at loss mitigation was not successful. The present case does not call for loss mitigation but instead the Debtor intends to pay his arrears through his model 13 plan. The mere fact that the Debtor was not successful in previous loss mitigation attempts does not bar the Debtor from getting an extension of the automatic stay.
3. Since the Mortgagee has not filed a proof of claim and does not have an exact amount of the claim in the Affirmation in Opposition it was not possible for the Debtor to account for said claim in the filed model 13 plan. Instead, the Debtor used the amounts given to the Debtor from the Mortgagee prior to filing the case. The Debtor also would like to review any filed claim filed by the Mortgagee to see why there is such a discrepancy between the most recent statement and the \$186,000 amount alleged in the opposition.
4. Attached to this Reply are copies of the Debtor's leasing agreements and an affidavit of contribution from the Debtor's son (**Exhibit B**). The amounts are higher than reflected in the initial schedules, so those will be amended shortly. It is anticipated that the Debtor's amended schedules will show approximately \$5000 in disposable income. In the Debtor's prior case he had approximately \$3,600 in disposable income.
5. The Debtor also informed me that he receives approximately \$350 to \$400 per month in tips from work. (**Exhibit E**)
6. It should be noted that the Debtor contracted COVID during his last case and was out of work for

about 3 months. This and his mental health were the reasons he was unable to meet the demands of chapter 13 in his last case.

7. Attached to this reply is a letter from the Debtor's psychologist. **(Exhibit C)**
8. Attached to this reply is evidence that the Debtor has paid \$7000 on January 24, 2023 to the Chapter 13 Trustee's TSF Bill pay site. **(Exhibit D)**
9. Attached to this reply is the Debtor's supplemental affidavit. **(Exhibit E)**

Dated: January 25, 2023

New York, New York

/s/ William Waldner
WILLIAM WALDNER, ESQ.
Attorney for Debtors
469 Seventh Avenue
Twelfth Floor
New York, NY 10018
212-244-2882
willwaldner@gmail.com

EXHIBIT A



321 Research Pkwy, Ste 303
Meriden, CT 06450
NMLS ID# 17022

003579

ANTHONY BITETTO
171 FIGUREA AVE
STATEN ISLAND, NY 10312



MORTGAGE LOAN STATEMENT



Statement Date: December 16, 2022

Property: 171 FIGUREA AVENUE
Address: STATEN ISLAND, NY 10312

CUSTOMER SERVICE

Website: www.planethomelending.com

Customer Service: (866) 882-8187

Email: cs@myloansupport.com

PAYMENT AMOUNT

Loan Number: 3942
Next Payment Date: 01/01/2023
Payment Amount: \$151,700.79

BANKRUPTCY MESSAGE

Our records show that either you are a debtor in bankruptcy or you discharged personal liability for your mortgage loan in bankruptcy.

We are sending this statement to you for informational and compliance purposes only. It is not an attempt to collect a debt against you.

If you want to stop receiving statements, write to us.

ACCOUNT INFORMATION

Loan Payment Date: 06/01/2019
Principal Balance: \$374,118.62
2nd Principal Balance: \$0.00
Interest Rate: 4.625%
Prepayment Penalty: No

EXPLANATION OF PAYMENT AMOUNT

Principal: \$1,284.43
Interest: \$1,246.10
Escrow (Taxes and Insurance): \$855.73
Other: \$0.00
Other Reserves: \$0.00
Optional Products: \$0.00
Regular Monthly Payment: \$3,386.26
Total Fees and Charges: \$10,098.68
Past Unpaid Amount: \$141,306.62
Unapplied Balance: \$3,090.77
Total Payment Amount: \$151,700.79

TRANSACTION ACTIVITY (11/17/22 to 12/16/22)

Date Paid	Description	Principal	Interest	Escrow	Other	Fees and Charges	Total
11/29/22	Property Inspection	\$0.00	\$0.00	\$0.00	\$0.00	\$14.00	\$14.00
11/29/22	Property Inspection	\$0.00	\$0.00	\$0.00	\$0.00	\$14.00	\$14.00

PAST PAYMENTS BREAKDOWN

	Paid Last Month	Paid Year to Date
Principal	\$0.00	\$11,702.39
Interest	\$0.00	\$16,133.44
Escrow (Taxes and Insurance)	\$0.00	\$22,100.20
Other	\$0.00	\$0.00
Fees	\$0.00	\$0.00
Partial Payment (Unapplied)**	\$0.00	\$3,090.77
Total	\$0.00	\$53,026.80

Important Information About Partial Payments

** Partial Payments: Any partial payments that you make are not applied to your mortgage, but instead are held in a separate "unapplied" account. If you pay the balance of the partial payment, the funds will then be applied to your mortgage.

ACCOUNT HISTORY

Recent Account History

* Payment Due 07/01/22 Unpaid Amount of \$3,386.26.
* Payment Due 08/01/22 Unpaid Amount of \$3,386.26.
* Payment Due 09/01/22 Unpaid Amount of \$3,386.26.
* Payment Due 10/01/22 Unpaid Amount of \$3,386.26.
* Payment Due 11/01/22 Unpaid Amount of \$3,386.26.
* Payment Due 12/01/22 Unpaid Amount of \$3,386.26.
Current payment date 01/01/23: \$3,386.26.
Total: \$151,700.79 unpaid amount that, if paid, would bring your loan current.

If you are experiencing financial difficulty: See back for information about mortgage counseling assistance.

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

Detach here and send this portion of the statement with your payment. Retain top portion for your records.

PAYMENT AMOUNT

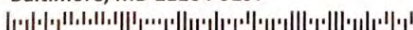
Loan Number: 3942
Borrower: ANTHONY BITETTO
Next Payment Date: 01/01/2023
Payment Amount: \$151,700.79

Please write your loan number on your check or money order.

Please do not send any correspondence with your payment.

☐ Check this box if address form completed on the reverse.

Planet Home Lending, LLC
P.O. Box 69197
Baltimore, MD 21264-9197



Monthly Payment Amount \$

Additional Principal \$

Additional Escrow \$

Late Fees \$

Other** (Please Specify) \$

TOTAL ENCLOSED \$

EXHIBIT B

LEASE RENTAL AGREEMENT CONTRACTThe Tenant(s) known as JOE DAHL, hereby agree to rent the dwellinglocated at (2ND FL) 171 FIGUREA AVE., STATEN ISL, NY 10312

The premises are to be occupied by the above named tenants only. Tenant may not sublet premises.

TERM The term shall commence on 2/1/2020 to 12/31/2024, at \$ 2,300 -
per month payable on the 1st of each month in full.**LATE FEES** In the event rent is not paid by the N/A) day after due date, Tenant agrees to pay a late charge of \$ _____**UTILITIES** Tenant shall be responsible for the payment of the following utilities: water, electric, gas, heating fuel, Telephone.**APPLIANCES** Appliances provided in this rental are : stove, refrigerator, dishwasher, ☒ CENTRAL
MICROWAVE

Repairs will be born by said Tenants if damage is due to negligence of Tenants.

SECURITY Amount of security deposit is \$ N/A. Security shall be held by Landlord until the time said Tenants have vacated the premises and Landlord has inspected it for damages. Tenant shall not have the right to apply Security Deposit in payment of any rent. Security deposits must be raised proportionately with rent increases.**INSURANCE** Tenant is responsible for liability/fire insurance coverage on premises. Tenant agrees to obtain a "Renter's Insurance" policy and to provide Owner or agent with a copy of policy within seven (7) days of lease execution.**NOTICES** Should tenant decide to vacate the premises, a 30 day written notice to the landlord is required. Should landlord decide to have tenants vacated, a 30 day written notice is required. Tenant agrees to allow premises to be shown at any and all reasonable times for re-rental. LEASE IS FOR 2/1/2020 → 12/31/2024**REAL ESTATE COMMISSION** (If applicable) In the event a commission was earned by a real estate broker, Tenant shall not take possession of the premises unless all fees due broker are paid in full as agreed. Commission is payable when this lease is signed by the Tenant(s). It is solely for locating the rental for the Tenant and is not refundable under any circumstances regardless of any disputes or conditions between the Landlord and Tenant before or after occupancy is taken.**ACKNOWLEDGMENT** Tenants hereby acknowledge that they have read, understand and agree to all parts of this document, and have received a copy.

	AMOUNT RECEIVED	BALANCE DUE
RENT :	<u>2,300 -</u>	<u>MONTHLY</u>
SECURITY:	_____	_____
BROKER'S FEE:	_____	_____

INCLUDES USE OF STORAGE SHED, SCREEN
HOUSE + GAS BBQ

THE UNDERSIGNED TENANT(S) ACKNOWLEDGES RECEIPT OF A COPY HEREOF.

DATE: 2/1/2020 → 12/31/2024OWNER/AGENT ANTHONY BISETHO TENANT JOSEPH DAHLADDRESS 171 FIGUREA AVE 5th NY TENANT J. Dahl

PHONE _____ PHONE _____

LEASE RENTAL AGREEMENT CONTRACT

The Tenant(s) known as RICHARD GIUDICE, hereby agree to rent the dwelling located at 171 FIGURE A AVE, STATEN ISLAND, NY 10312

The premises are to be occupied by the above named tenants only. Tenant may not sublet premises.

TERM The term shall commence on 2/1/2020 to 12/31/2024, at \$ 1,900 per month payable on the 1st of each month in full.

LATE FEES In the event rent is not paid by the N/A () day after due date, Tenant agrees to pay a late charge of \$

UTILITIES Tenant shall be responsible for the payment of the following utilities: water, electric, gas, heating fuel, Telephone.

APPLIANCES Appliances provided in this rental are: stove, refrigerator, ~~dishwasher~~, ☒ air conditioner(s), MICROWAVE, PORT HEATER
Repairs will be born by said Tenants if damage is due to negligence of Tenants.

SECURITY Amount of security deposit is \$ N/A. Security shall be held by Landlord until the time said Tenants have vacated the premises and Landlord has inspected it for damages. Tenant shall not have the right to apply Security Deposit in payment of any rent. Security deposits must be raised proportionately with rent increases.

INSURANCE Tenant is responsible for liability/fire insurance coverage on premises. Tenant agrees to obtain a "Renter's Insurance" policy and to provide Owner or agent with a copy of policy within seven (7) days of lease execution.

NOTICES Should tenant decide to vacate the premises, a 30 day written notice to the landlord is required. Should landlord decide to have tenants vacated, a 30 day written notice is required. Tenant agrees to allow premises to be shown at any and all reasonable times for re-rental.

REAL ESTATE COMMISSION (If applicable) In the event a commission was earned by a real estate broker, Tenant shall not take possession of the premises unless all fees due broker are paid in full as agreed. Commission is payable when this lease is signed by the Tenant(s). It is paid for locating the rental for the Tenant and is not refundable under any circumstances regardless of any disputes or conditions between the Landlord and Tenant before or after occupancy is taken. LEASE IS FOR 4 YEARS 2/1/2020 - AND 10 MONTHS 12/31/2024

ACKNOWLEDGMENT Tenants hereby acknowledge that they have read, understand and agree to all parts of this document, and have received a copy.

	AMOUNT RECEIVED	BALANCE DUE
RENT:	<u>\$1,900</u>	<u>MONTHLY</u>
SECURITY:	<u> </u>	<u> </u>
BROKER'S FEE:	<u> </u>	<u> </u>

INCLUDES USE OF BACK YARD, SCREEN HOUSE
BACK YARD PARKING SPOT AND GAS BBQ USE.

THE UNDERSIGNED TENANT(S) ACKNOWLEDGES RECEIPT OF A COPY HEREOF.

DATE: 2/1/2020 to 12/31/2024 2/1/2020

OWNER/AGENT <u>ANTHONY BITETTO</u>	TENANT <u>RICHARD GIUDICE</u>
ADDRESS <u>171 FIGURE A AVE. ST. NY</u>	TENANT <u> </u>
PHONE <u> </u>	PHONE <u> </u>

LEASE RENTAL AGREEMENT CONTRACT

The Tenant(s) known as DAVID BUTERA hereby agree to rent the dwelling located at 171 FIGUREA AVE, STATEN ISL., NY 10312

The premises are to be occupied by the above named tenants only. Tenant may not sublet premises.

TERM The term shall commence on 1/1/2023 → 12/31/2024 at \$ 1,850.- per month payable on the 1st of each month in full.

LATE FEES In the event rent is not paid by the N/A day after due date, Tenant agrees to pay a late charge of \$

UTILITIES Tenant shall be responsible for the payment of the following utilities: water, electric, gas, heating fuel, Telephone.

APPLIANCES Appliances provided in this rental are: stove, refrigerator, dishwasher, ☒ air conditioner(s), MICROWAVE, PORT HOTTER
Repairs will be born by said Tenants if damage is due to negligence of Tenants.

SECURITY Amount of security deposit is \$ N/A. Security shall be held by Landlord until the time said Tenants have vacated the premises and Landlord has inspected it for damages. Tenant shall not have the right to apply Security Deposit in payment of any rent. Security deposits must be raised proportionately with rent increases.

INSURANCE Tenant is responsible for liability/fire insurance coverage on premises. Tenant agrees to obtain a "Renter's Insurance" policy and to provide Owner or agent with a copy of policy within seven (7) days of lease execution.

NOTICES Should tenant decide to vacate the premises, a 30 day written notice to the landlord is required. Should landlord decide to have tenants vacated, a 30 day written notice is required. Tenant agrees to allow premises to be shown at any and all reasonable times for re-rental. LEASE IS FOR 1/1/2023 - 12/31/24

REAL ESTATE COMMISSION (If applicable) In the event a commission was earned by a real estate broker, Tenant shall not take possession of the premises unless all fees due broker are paid in full as agreed. Commission is payable when this lease is signed by the Tenant(s). It is solely for locating the rental for the Tenant and is not refundable under any circumstances regardless of any disputes or conditions between the Landlord and Tenant before or after occupancy is taken.

ACKNOWLEDGMENT Tenants hereby acknowledge that they have read, understand and agree to all parts of this document, and have received a copy.

	AMOUNT RECEIVED	BALANCE DUE
RENT:	<u>1,850.-</u>	<u>MONTHLY</u>
SECURITY:	<u> </u>	<u> </u>
BROKER'S FEE:	<u> </u>	<u> </u>

\$1850.- AS OF JAN. 2023 BASED ON OVER-
NIGHT GUESTS ALLOWED ANYTIME

THE UNDERSIGNED TENANT(S) ACKNOWLEDGES RECEIPT OF A COPY HEREOF.

DATE: 1/1/2023 → 12/31/2024

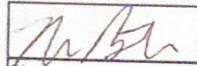
OWNER/AGENT ANTHONY BUTERA TENANT David Butera
SM
ADDRESS 171 FIGUREA AVE 10312 TENANT DBM
PHONE PHONE

UNITED STATES BANKRUPTCY COURT		
EASTERN DISTRICT OF NEW YORK		
In re: <u>Anthony Angelo Bitetto</u>	<input checked="" type="checkbox"/>	
	Chapter 13	
	Case No.:	<u>1-23-40050</u>
Debtor(s)		
	<input checked="" type="checkbox"/>	AFFIDAVIT OF CONTRIBUTION

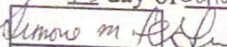
COUNTY OF Richmond
STATE OF New York

Nicholas Bitetto, being duly sworn, deposes and says that:

1. I am the Debtor's Son and live at the Debtor's house.
2. I work at Rolling Frito-Lay Sales LP in Franklin Park, NJ.
3. My gross monthly salary is approximately \$4,092.24, and my net monthly salary is approximately \$3,096.
4. Attached hereto is a copy of my recent pay stub.
5. I am committed to contribute \$1,800 per month towards the Debtor's Chapter 13 Plan.


Signature of Contributor

Sworn to me this
23 day of January, 2023


NOTARY PUBLIC

SIMONE M. FELDMAN
NOTARY PUBLIC, STATE OF NEW YORK
No. 01FE6441822
Qualified in Richmond County
My Commission Expires 10/03/26

****DEBTOR(S) MUST ATTACH A COPY OF CONTRIBUTOR'S
PAY STUB****

3:17



1 of 1



Rolling Frito-Lay Sales, LP
7701 Legacy Drive
Plano, TX 75024-0000

Name : Biletto, Nicholas A.
Address : 171 Figurea Ave
 Staten Island NY 10312

Personnel ID :
Cost Center : 2503303416
Payroll Area : U1

Cost Center : 2503303416
Cost Center Desc : ZN-NORTH NEW JERSEY ZONE
Department : 30017919
Location : Franklin Park NJ

Payroll Area Desc : Weekly Sales
Payroll Period : 01/01/2023 to 01/07/2023
Pay Date : 01/06/2023

Tax Authority	Filing Status	Allowances	Addl Amt
FED	Mar. Sep	00	
NJ	Single	00	
NY	Single	00	

Check Date	Gross Wages	Taxes	Deductions	Net Wages	
Current	01/06/2023	1,023.06	209.70	39.21	774.15
Year to Date		1,023.06	209.70	39.21	774.15

Taxable Earnings Summary by Earning Code

Earning Code	Description	Amount
1007	Performance Base Pay	749.89
1498	Performance Pay Advance	273.17
Total Taxable Earnings Summary by Earning Code		1,023.06

Taxable Earnings		Current Period		Year to Date	
	Retro Period	Rate	Units	Hours	Amount
1007	Performance Base Pay			40.00	749.89
1498	Performance Pay Advance				273.17
1498	Performance Pay Advance	12/18/2022 -12/24/2022			273.17
9088	Total Hrs Paid inc Hoi	12/18/2022 -12/24/2022	35.25		
Total Taxable Earnings					1,023.06

Pre Tax Deductions		Current Amount	YTD Amount
	Retro Period		
2021	Medical Pre-Tax	29.52	29.52
2023	Dental Pre-Tax	8.15	9.15
Total Pre Tax Deductions		38.67	38.67

Post Tax Deductions		Current Amount	YTD Amount
	Retro Period		
2521	Add'l Emp Life	0.54	0.54
Total Post Tax Deductions		0.54	0.54

Employee Tax Deductions		Current Period		Year to Date	
	Retro Period	Tax	Tax Gross	Tax	Tax Gross
Federal	Federal				
	Withholding Tax	84.29	984.39	84.29	984.39
	EE Social Security Tax	61.03	984.39	61.03	984.39
	EE Medicare Tax	14.27	984.39	14.27	984.39
State	New Jersey				
	Withholding Tax	30.77	1,023.06	30.77	1,023.06
	EE Unemployment Tax	3.91	1,023.06	3.91	1,023.06
	EE Workforce Developm T	0.43	1,023.06	0.43	1,023.06
	EE Family Leave Insur	0.61	1,023.06	0.61	1,023.06
	EE Health Insurance Ta		1,023.06		1,023.06
	EE Disability Tax		1,023.06		1,023.06
State	New York				
	Withholding Tax	14.39	984.39	14.39	984.39
Total Tax Deductions		209.70		209.70	

Check/Transfer Information

Bank Number	Bank Name	Account Number	Payment Method	Check/Direct Dep. No.	Amount
021000021			Bank transfer		774.15

sapgw.mypepsico.com


EXHIBIT C

Linda Cloer Aspromonte, MS, CASAC

Clinical Director

Intervention Counseling

150 Adelaide ave.
SI, NY 10306
(718) 673 0226
laspromonte51@gmail.com

26th January 2023

To whom it may concern,

Anthony Bitetto is my client and I have been working with him for several months. When Anthony presented for treatment, he was suffering tremendous anxiety and crushing depression, due to an incredible amount of stress in his life. With the use of COGNITIVE THERAPY, Anthony has improved his ability to function efficiently in his life. He is dealing with all of life's challenges extremely well and his prgnosis for continued success is excellent.

Linda Cloer Aspromonte, MS, CASAC

EXHIBIT D


Bank

America's Most Convenient Bank®

 ANTHONY A BITETTO
 171 FIGUREA AVE
 STATEN ISLAND NY 10312

 TD BANK, N.A.
 929 HUGUENOT AVENUE
 STATEN ISLAND, NY 10312

670 / TD Beyond Checking

549

Statement Beginning Balance			\$0.00
Plus	9	Deposits and Other Credits	\$10,650.02
Less	3	Checks and Other Debits	\$7,557.99
Statement Balance As Of: 01/25/2023			\$3,092.03

Transactions By Date

Date	Description	Debit	Credit	Balance
01/06/2023	ETRANSFER CR Transfer from IM		\$500.00	\$500.00
01/09/2023	DDA WITHDRAW TW04B534 4401 AMBOY I	\$100.00		\$400.00
01/11/2023	Online Xfer Transfer from CK		\$3,300.00	\$3,700.00
01/20/2023	ATM CASH DEPOSIT TW04B534 4401 AMBC		\$600.00	\$4,300.00
01/20/2023	ATM CASH DEPOSIT TW04B534 4401 AMBC		\$1,400.00	\$5,700.00
01/20/2023	Online Xfer Transfer from CK		\$1,500.00	\$7,200.00
01/23/2023	Online Xfer Transfer from CK		\$500.00	\$7,700.00
01/23/2023	ATM CASH DEPOSIT TW04B534 4401 AMBC		\$850.00	\$8,550.00
01/23/2023	DEPOSIT		\$2,000.00	\$10,550.00
01/24/2023	TFS 888-729-2413 TFS PAY	\$7,007.99		\$3,542.01
01/25/2023	Online Xfer Transfer to CK	\$450.00		\$3,092.01
01/25/2023	IOD INTEREST PAID		\$0.02	\$3,092.03

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

-----X
In re
ANTHONY BITETTO,
Debtor(s).
-----X

CHAPTER 13
CASE NO.
SUPPLEMENTARY AFFIDAVIT

STATE OF NEW YORK)
)SS
COUNTY OF NEW YORK)

Anthony Bitetto, being duly sworn, deposes and says:

1. I am the debtor in the above-captioned Chapter 13 case and make this Affidavit in Support of the Motion Pursuant to 11 U.S.C. Section 362(c)(3) to continue the Automatic Stay for all creditors.
2. In the beginning of 2022, I contracted COVID. I became very sick and was not able go to work. After a few weeks I did recover but still had lingering effects that kept me out of work.
3. I did return to work on or about March 2022. Once I returned to work my boss agreed to assign me to drive smaller cars on shorter routes. I was driving a Chevy Tahoe for longer drives but was allowed to drive a Toyota Prius for shorter hauls. Since I am driving shorter drives, I now get cash tips. The tips average \$350 to \$400 per week. With the longer routes I only received a salary.
4. Because I was not working during that period, I was unable to keep up with both my mortgage and trustee payments. My case was dismissed.
5. Just this month one of my tenants has actually agreed to pay \$1850 per month so that his girlfriend can live with him aka overnight guests (**Exhibit B**). My total rental income is now \$6,050 per month.
6. Additionally, my son, has agreed to pay \$1800 per month to my chapter 13 case to make sure that we both have a place to live (**Exhibit B**).
7. I have already made payments of \$7000 to the trustee in my chapter 13 case through TSF Bill pay.

8. My son has also agreed to pay my life insurance policy, since he is the sole beneficiary, which is \$327 per month.
9. I respectfully request that the Automatic Stay of 11 U.S.C. Section 362 be continued as to all creditors for the duration of this case.
10. This case has been filed in good faith as I fully feel I am able to meet the demands of this case.

WHEREFORE, I, Anthony Bitetto, respectfully pray of an Order Pursuant to 11 U.S.C. Pursuant to 11 U.S.C. Section 362(c)(3) to continue the Automatic Stay in the instant Chapter 13 case, together with such other and further relief as to this Court may seem just and proper.


Anthony Bitetto

Dated: 1/26/2023

Sworn to before me this 26th day of
~~January~~ December, 2023



